

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

|   |
|---|
| California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115. |
|---|

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

|   |
|---|
| In re P.A., a Person Coming Under<br>the Juvenile Court Law.  |
| ALAMEDA COUNTY SOCIAL<br>SERVICES AGENCY,<br><br>Plaintiff and Respondent,<br><br>v.<br>V.A.,<br><br>Defendant and Appellant. |

A159810

(Alameda County  
Super. Ct. No. JD-029217-01)

V.A. (Mother) appeals an order terminating her parental rights to her child, P.A. (minor). Her sole contention is that the trial court should have applied the beneficial relationship exception to the termination of her parental rights to minor. We shall affirm the order.

**I. BACKGROUND**

***A. Petition and Detention***

The Alameda County Social Services Agency (Agency) became involved with minor and Mother after minor was born prematurely, weighing four pounds, four ounces, and Mother had made suicidal statements to medical staff at the time of the child's birth. Following an August 30, 2017 team meeting, Mother agreed to participate in informal family maintenance

services to address her mental health and anger management issues, ensure she maintained stable housing, and to provide appropriate supervision.

Because Mother only minimally participated in her informal family maintenance case plan, in January 2018, the Agency filed a Welfare and Institutions Code<sup>1</sup> section 300 petition in Alameda County Superior Court on behalf of minor. The petition alleged there was a substantial risk minor would suffer serious harm or illness due to Mother's inability to provide regular care for minor. As to section 300, subdivision (b)(1), it alleged that on December 5, 2017, the parents, V.A. and J.B. (Father), engaged in a verbal dispute while minor was present, Mother drove without a driver's license while minor was in the car, and Father jumped on the car hood, resulting in the car crashing into a parked vehicle. Additionally, the petition alleged that Mother "has moderate developmental delays," and "is eligible for services through the Regional Center," but "is currently refusing treatment."<sup>2</sup> The petition alluded to Mother's suicidal statements to medical staff and alleged Mother "has a history of depression and is currently prescribed medication for postpartum depression but is no longer taking it."

The court, on January 18, 2018, detained minor.

### ***B. Jurisdiction/Disposition***

In its jurisdiction/disposition report for the February 1, 2018 hearing date, the Agency recommended the court sustain the petition, declare minor a dependent, and place her out of the home with family reunification services to Mother.

---

<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

<sup>2</sup> As to section 300, subdivision (g), it was alleged that Father's whereabouts and interest and ability to provide care for minor were unknown.

During the dependency investigation, the child welfare worker spoke to Mother's former foster parent, Pamela L., who reported Mother had been taking psychiatric medications since she was 15 years old, and had been “ ‘up and down’ ” but was much calmer when taking her medication. Though Pamela L. had helped Mother obtain housing, Mother continued to get kicked out due to her behavioral outbursts. Pamela L. reported she was concerned Mother did not know how to manage money and resources, Mother “can become very irritable and defensive, can be difficult to get along with and will ‘snap’ at friends and family,” and she did not comprehend the situation and was making poor decisions for herself and minor.

On January 29, 2018, the child welfare worker supervised a two-hour visit between Mother and minor. Mother engaged with minor during the entire visit and appeared to be “well bonded” with the baby.

The Agency's case plan “Service Objectives” for Mother included: (1) comply with medical or psychological treatment; (2) obtain and maintain a stable and suitable residence; and (3) be willing and able to arrange appropriate child care and supervision when away from home. Mother's “Client Responsibilities” included engaging in counseling/mental health services.

After the court set a contested hearing, the Agency maintained its recommendation in an addendum report filed on March 19, 2018. Since the previous hearing, Mother had engaged in parenting classes, anger management, and individual therapeutic services. Mother was taking her medications and participated in supervised visits with minor. However, Mother no longer had stable housing because she experienced conflict with her roommate.

Several days before the Agency filed the addendum report, the child welfare worker spoke with Mother's maternal cousin, S.E., who was supervising the visits between Mother and minor. S.E. reported the visits were going well, Mother was appropriate with the baby, and was managing her emotions much better since starting to take her medications. On that same day, the child welfare worker facilitated a meeting with Mother and her former foster parents; however, the meeting did not go well because Mother became upset and asked her foster parents to leave the room, complaining they did not trust her and talked about her.

Mother withdrew her request for a contested hearing on the same date the addendum report was filed. After the court admitted the Agency reports into evidence, it continued the hearing.

On March 26, 2018, minor's then-foster mother told the child welfare worker about an uncomfortable exchange with Mother at a previous visit. Evidently, Mother was on her cell phone cursing and yelling. As the maternal cousin, S.E., was picking up minor from the caregiver, Mother " 'snatched the baby' " from S.E.'s arms, and angrily stated to the person on the phone, " 'this lady thinks she is taking care of my baby.' "

Nonetheless, in an additional addendum report filed on April 2, 2018, the Agency once again maintained its recommendations, including reunification services.

In a report prepared for the May 2, 2018 continued jurisdiction/disposition hearing, the Agency indicated Mother had contact with the child welfare worker on April 25, 2018, during which she expressed frustration about the dependency process, wanted minor returned to her, was not clear why that could not happen, and blamed Father for minor not being in her care.

During the May 2 hearing, the court admitted the Agency reports into evidence and all parties submitted. The court adopted the Agency's recommendations, sustained the section 300, subdivision (b) allegation, adjudged minor a dependent, removed minor from Mother's home, and ordered reunification services for Mother.

### ***C. Six-month Report and Review***

In a status review report filed in anticipation of the October 23, 2018 six-month review, the Agency recommended minor remain a dependent of the court, remain in her out-of-home placement, and the court terminate family reunification services.

Minor had been placed with a non-related extended family member (NREFM), G.W., who became her caregiver.<sup>3</sup>

Subsequently, the child welfare worker reported about a disturbing incident between Mother and G.W. occurring in early May 2018. When G.W. took minor to the maternal grandmother's home, Mother was already there. According to G.W., Mother "snatched the baby" from the grandmother, stating she was taking minor, at which point, the grandmother took minor from Mother. Mother then assaulted G.W., hitting her multiple times with a cell phone. After G.W. pushed Mother away causing her to fall, Mother bit G.W. on the leg and attempted to bite her several more times. Due to the incident, G.W. requested that further visits be supervised at The Gathering Place. At some time that month, visits between Mother and minor were transferred to The Gathering Place.

---

<sup>3</sup> G.W. is also referred to as the "maternal aunt" at various points in the Agency's reports. G.W. was a foster sibling of mother and grew up in Pamela L. and George A.'s home.

A Gathering Place support counselor was worried about Mother's mental health because during a June 19, 2018 visit, Mother talked about a rapper who made a song about suicide and depression "for 'people like me.'" At a previous visit, Mother started talking about suicide and how a man tried to kill himself. The counselor noted Mother appeared depressed during the visits. Mother made more suicidal statements to the child welfare worker in mid-July, and a staff worker at The Gathering Place heard mother state, "I might as well be dead,'" as she walked out of a meeting.

Although Mother had completed 16 sessions of parenting classes by mid-June and stated she had "learned a lot,'" she was unable to provide an example of what she had learned.

Contrary to Mother's representation to the child welfare worker in August 2018 that she was seeing an individual therapist weekly, the child welfare worker learned in September, when she contacted the assigned therapist, that mother had not seen the therapist since March. The therapist reported her intake with Mother in January 2018 was for major depressive disorder, recurrent episode. The assigned therapist without explanation discontinued Mother's psychotropic medications as of July 31, 2018.

By the end of September, the child welfare worker received a progress report from the staff at the domestic violence program in which Mother was participating. The report indicated Mother had completed 26 of the required 52 classes. Shortly thereafter, staff told the child welfare worker Mother was not appropriate for group classes because she was not attentive in classes and needed constant prompting not to talk to other classmates. As a result, individual therapy was recommended.

The six-month status review report indicated Mother was receiving twice weekly, two-hour, supervised visits with minor. The report, however,

described some troubling aspects of an overnight visit supervised by the maternal cousin, S.E. Though S.E. reported the visit went well, the caregiver, G.W., stated that when minor returned from the visit, she came back unbathed, with diaper rash, and vomiting. At a doctor's appointment following the visit, the doctor said minor was dehydrated. During the same visit, Mother drove minor in a car without a driver's license. Because of minor's health after the overnight visit, Mother driving minor without a license, concerns raised by The Gathering Place staff regarding Mother's failure to follow staff guidance, and Mother discussing suicidal ideation at the visits, the Agency determined additional overnight visits would not be appropriate at that time.

The status review report also included information from The Gathering Place regarding visitation. To summarize, Mother arrived for a June 2018 visit "in a bad space," and was not following the safe exchange rules. Even though Mother was told on multiple occasions she needed to be close to minor when minor was on the couch, during a visit several days later, minor leaned too far back and fell, hitting her head on the carpet. On September 18, 2018, The Gathering Place closed out Mother's case because when she arrived for a visit that day, she told a support counselor to shut up and said, "you're not my mother." Mother continued to yell and speak aggressively to the support counselor despite being asked by staff to change her tone. She continued to be disrespectful, telling the support counselor to shut up and calling her stupid three different times. The Gathering Place asked that Mother not visit there anymore because she was exhibiting the same behaviors recently addressed at the review meeting.

Subsequently, the child welfare worker supervised three visits and observed Mother to be engaged with minor. She read to minor, fed her, and

changed her diaper. Mother needed direction to stay close to minor and be cautious of larger chunks of food, which could be a choking hazard. According to the child welfare worker, minor appeared to enjoy visits with Mother, and would smile and reach toward her. Minor also had a clear and significant attachment to G.W. Beginning on October 11, 2018, Jackie Yancy from Triumph Ministries supervised two-hour visits twice a week.

Mother set the matter for a contested six-month review hearing. In preparation for the hearing, the Agency filed an addendum report. It continued to recommend termination of reunification services.

The addendum report noted that Mother did not come to seven scheduled therapy appointments in the last six months. When the child welfare worker and Mother met in November, she encouraged Mother to re-engage with the Regional Center, but Mother refused.

At the December 14, 2018 contested hearing, the juvenile court admitted the Agency reports into evidence, heard testimony from Mother's therapist and the child welfare worker, ordered Mother to contact the Regional Center for services and continue taking prescribed medications, and then continued the case to January 11, 2019.

In the addendum report prepared for the January hearing, Mother's therapist told the child welfare worker that Mother was scheduled to meet once every two weeks, but often canceled and rescheduled. Ms. Yancy, the visitation supervisor, informed the child welfare worker that she would " 'not trust mother' " to do visits unsupervised. After the child welfare worker completed a referral to the Regional Center and provided information to Mother, Mother at first reported she had gone to the center and filled out the application. A few days later, however, Mother admitted she had not gone to the Regional Center.



On or about January 3, 2019, the child welfare worker contacted Mother's therapy provider who stated Mother had an appointment with a psychiatrist, but the psychiatrist did not prescribe medication, and Mother told the psychiatrist she did not want to take medication. The child welfare worker learned Mother had been assigned a Regional Center case manager. According to the case manager, Mother had called her in December 2018 and wanted to re-engage but reported that Mother " 'doesn't have realistic ideas of how to take care of a child.' "

At the continued, contested six-month review hearing in January 2019, the court rejected the Agency's recommendation to terminate services and ordered that Mother receive reunification services until the 12-month hearing.

#### ***D. 12-month Status Review***

In its 12-month status review report prepared for the March 1, 2019 hearing, the Agency continued to recommend that the court terminate reunification services. Among other things, the report noted Mother had previously struggled to understand minor's needs, exemplified by not staying close enough to the child to prevent her from falling or bumping her head during visits, and becoming frustrated with minor while changing minor's diaper during visits. Moreover, Mother could not verbalize what she learned during parenting classes. Mother's therapist informed the child welfare worker that Mother had been engaging in therapy every two weeks, and the psychiatrist who had seen Mother did not recommend medication for Mother because he believed Mother presented with oppositional behavior rather than depression. Significantly, the psychiatrist believed Mother's oppositional behavior would make it difficult for her to care for a young child who would not be able to be patient with her.

As reported in the status review report, Mother had been attending anger management classes and had completed 36 classes. Mother reported, however, that she had been in contact with the alleged Father which was a concern for the child welfare worker because Father had failed to engage with the Agency or participate in domestic violence classes.

During Mother's twice weekly, two-hour visits with minor at Triumph Ministries, Ms. Yancy observed that the visits had been going well for the last month and Mother's engagement with minor had improved. Ms. Yancy would trust mother to be alone with minor for "short periods," with the supervisor just outside the room, checking regularly. The child welfare worker observed minor sought comfort from both Mother and the caregiver, and she would get excited when she saw Mother, but minor had shown some attachment disruption symptoms, including what the caregiver described as clinginess, disrupted sleep, and irritability.

Minor was adjusting well to her placement where she had been since May 2018, and had developed a routine and was comfortable, smiley, and talkative.

According to the 12-month status review report summary, the Agency continued to worry about Mother's struggles with accepting help from service providers, family, or support people. The Agency was concerned that Mother felt she could raise minor on her own, though she had not demonstrated an ability to recognize when she needed help necessary to provide minor a safe living environment. The report reiterated Mother was developmentally delayed and struggled with short- and long-term memory loss, impulse control, and being able to follow a series of instructions, all of which were compounded by oppositional behavior. Specifically, Mother had not been able to work with a parent advocate, repeatedly refused to engage with the

Regional Center, and had engaged with family members in a violent and destructive manner. Furthermore, the Agency was concerned about Mother's recent contact with Father, her disclosure she may be pregnant, and her claim that if minor was returned to her, she was going to leave the state.

In an addendum report prepared for the contested 12-month review hearing, the Agency maintained its recommendation for termination of reunification services. The report discussed the visits between Mother and minor. Ms. Yancy spoke with the child welfare worker on April 2, 2019, reporting visits had been going well without problems. In mid-March, visits had been changed from "supervised" to "observed," meaning that for the first hour, Ms. Yancy would be present for 15 minutes, then would step away for 15 minutes; the second hour would be fully supervised. Referring to specific dates, the child welfare worker noted that during the March 7, 2019 visit, Mother had appropriately protected minor from injury. On April 11 and 12, the visits were scheduled from 9:00 a.m. to noon, however, Mother arrived 30 minutes late and ended the visits 30 minutes early. When the child welfare worker texted Mother to remind her of her May 13, 2019 visit, Mother, after some back and forth, stated she had gone out of town to be with friends on Mother's Day, which was hard for her, and would not be at the visit.

The addendum report also noted that on May 7, 2019, the child welfare worker contacted Mother's therapist who stated Mother had been doing better and had been improving her ability to control her anger. Mother's anger management provider indicated Mother had attended 48 classes with 8 absences.

Despite the therapist's report indicating Mother showed improvement in controlling her anger, Mother continued to treat the child welfare worker with anger and hostility, at various times refusing to meet with her, hanging

up on her, or telling her, “‘I don’t want to hear your voice.’” When Mother’s case was not called at an April 2019 court hearing, she became upset, raised her voice and blamed the child welfare worker for the hearing not being called.

At the contested 12-month review hearing held on May 28 and June 12, 2019, the court admitted 10 social service reports into evidence and heard testimony from S.E., the maternal cousin, Ms. Yancy, the visitation supervisor, and Mother. On June 24, the court commended Mother on her recent progress and the “marke[d] improvement in the quality of visits,” but determined return of minor to Mother’s care would create a substantial risk of detriment to minor because Mother “has not yet made substantial progress complying with the case plan and she has not alleviated or mitigated the causes necessitating out-of-home placement.” A section 366.26 hearing was set for October 18, 2019.<sup>4 5</sup>

### ***E. Section 366.26 Selection and Implementation Hearing***

Child Welfare Worker Christine Bolts prepared the Agency’s section 366.26 report for the October 18, 2019 selection and implementation hearing. In it, the Agency reviewed the visitation history in the case, as detailed above, beginning with Mother’s first visit in March 2018. Ms. Bolts

---

<sup>4</sup> Mother filed a notice of intent to file a writ petition on June 26, 2019. This court denied Mother’s petition for extraordinary writ on the merits. (*V.A. v. Superior Court* (Oct. 11, 2019, A157673) [nonpub. opn.] )

<sup>5</sup> In October 2019, one week before the scheduled section 366.26 hearing, Mother filed a Judicial Council form JV-180 request to change court order (section 388 petition) asking the court to modify its June 24 order finding that return of minor would create a substantial risk of detriment to the child and terminating family reunification services. After hearing arguments from the parties on October 18, the court denied the section 388 petition.

related the visitation concerns, most of which were covered in previous reports, including the physical altercation between Mother and G.W. in May 2018, which took place in front of minor, and that following this incident, visits were moved to the Gathering Place to avoid further conflict between Mother and the caregiver, and were scheduled for two days per week, two hours per visit. The report also repeated The Gathering Place supervisor's concerns that during the visits, Mother talked about inappropriate topics such as suicide and a rapper that had recently been murdered. The court was again reminded The Gathering Place had terminated its services for Mother in September 2018 because she did not comply with their rules and had made multiple threats to harm staff. And the report recounted visits in September, October, and November 2018, where Mother needed instruction on how much to feed minor and how to give her smaller pieces of food. In a November 2018 visit, Mother had to be redirected from talking in front of minor about her brother's murder and a movie involving a school shooting.

Providing further details regarding visits between Mother and minor, the section 366.26 report stated that when Child Welfare Worker Suzan Kotch supervised a visit in July 2019, she observed that minor "had a subdued reaction to seeing [Mother] and only hugged her when prompted by [Mother]." During the visit, Mother mostly played videos for minor on her cell phone. The child, according to Ms. Kotch, had minimal engagement with Mother, mostly watching videos and eating snacks. Ms. Kotch did not see minor initiate affection or communication with Mother.

Ms. Kotch scheduled another visit for August 14, 2019; however, Mother never showed up or called to cancel the visit. Minor was described as "smiley and friendly." When the caregiver arrived to pick her up, she smiled

and yelled, “ ‘[M]om!’ ” and ran to her open arms. The child welfare worker reported minor did not seem upset when Mother failed to attend the visit.

Mother’s visits were still being supervised at Triumph Ministries, and Child Welfare Worker Lauren Presley reported they were going well. Generally, the visits involved Mother “playing video games on her phone or playing music and [minor] watching her.” Mother attempted at times to play with toys and books with minor, but when minor seemed disengaged, Mother used her phone to keep her attention. According to the report, Mother would bring snacks to the visits; however, the caregiver normally initiated or prompted hugs between Mother and minor. Ms. Presley further reported that Mother would sometimes become frustrated about various issues during the visits, speaking with Ms. Yancy or Ms. Presley, depending on who was supervising the visit. After attempting to answer questions or provide explanations, Mother would be redirected to engage with minor.

The section 366.26 report described minor as a “happy, healthy toddler who has a warm and close relationship with the proposed adoptive parent and her foster sibling.” However, the proposed adoptive parent reported that following minor’s visits with Mother, minor would “often scream, cry, and need to be cuddled more than usual.” Minor’s therapist informed Child Welfare Worker Presley in September 2019, that minor was demonstrating less stress during and following visits with Mother. However, because of minor’s “concerning behaviors” following visits, the proposed adoptive parent was uncertain if visitation with Mother was in minor’s best interests.

After the court denied Mother’s section 388 petition, on October 18, 2019, the court commenced the section 366.26 contested hearing. The court admitted into evidence the section 366.26 report, prior 2018 and 2019 addendum and status review reports, the February 2018

jurisdiction/disposition report, and the January 2018 detention report. Because Child Welfare Worker Christine Bolts was not available to testify, the court continued the hearing until November 21, 2019.<sup>6</sup>

Child Welfare Worker Presley filed an addendum report for the November 21 hearing. Ms. Presley reported on several visits she conducted with minor and G.W. in G.W.'s home. During a September 2019 visit, Ms. Presley observed minor call G.W. " 'mommy' " several times "as she leaned up against her, crawled on her lap, and asked for help opening a juice pouch." Presley observed minor playing with blocks and watching nursery rhyme music cartoons on the TV as G.W. helped minor introduce herself to Presley. G.W. also reported that minor was "doing much better in the home." During an October 2019 visit, after minor stumbled and bumped her knee, she crawled up on G.W.'s lap for comfort. Minor called G.W. " 'mommy' " several times when she wanted a sip from her cup. When G.W. tried to walk the child welfare worker down the stairs to the front door, minor "kept starting to cry when the caregiver was trying to leave her at the top of the stair." Eventually, G.W. picked up minor and brought her downstairs with her. The following month, in November, Ms. Presley visited minor and G.W. once again observing that minor was "talking, smiling and laughing" when G.W. played with her. Whenever required, G.W. prompted minor on cues such as " 'excuse me, thank you, sorry and please.' " In describing minor's bond with G.W., the child welfare worker noted it was "healthy, safe and appropriate." The report also noted minor was developmentally on target and "flourishing" in her placement."

---

<sup>6</sup> At Mother's request, the court added a new court date to consider Mother's application for new counsel. When Mother failed to appear at the hearing, her motion to change counsel was denied.

G.W. reported in September 2019 that she felt it was important for minor to have a relationship with Mother and was supportive of visits “as long as it was safe, healthy,” and had no negative effects on minor.

At the continued section 366.26 hearing on November 21, 2019, the court admitted into evidence the same reports admitted on October 18, and additionally admitted addendum reports from January 11, 2019 and May 2, 2018. The court also took judicial notice of all prior findings and orders.<sup>7</sup>

When the hearing commenced, the court stated it was concerned about Mother’s mental state. The court was uncertain whether Mother was “just emotionally upset” or “asleep” and later observed that Mother appeared to be in an “altered state.” Following a request by Mother’s counsel for appointment of a guardian ad litem, the court conducted a closed hearing after which it denied the request.

Mother testified her rights had been “terminated,” and minor was not her daughter, but simply “Somebody I gave birth to.” Mother added that Ms. Yancy was present at the visits, but she did not bother Mother and minor as she would go into another room and then check on them “In 30 minutes.” There were no problems with the prior two visits, and the most recent visit the previous Friday went well. When minor first saw Mother on the previous Friday, minor called Mother by her first name. Minor also called Mother by her first name when she wanted candy. While visiting, Mother gave minor food, changed her diaper, and played with minor inside and outside in the parking lot. At the conclusion of her direct examination, Mother indicated it was “hard to sit up here and talk about a child that’s not even mine,” but

---

<sup>7</sup> Mother’s counsel objected to any report prepared before January 11, 2019. The juvenile court admitted reports prior to December 14, 2018 for purposes of providing information regarding visitation and the “effectuation of the [case] plan and the mother’s performance in that plan.”



then wished to have “my daughter be with me.” She felt it was “Unfair” to terminate her parental rights.

Christine Bolts, the court adoptions finalization worker, testified that Ms. Presley visited minor and the caregiver on a monthly basis, while Ms. Bolts wrote the due diligence reports and the section 366.26 reports. Ms. Bolts stated that Mother generally visited twice a week for two hours each visit, and she was “generally compliant with her visits.” Based on Mother’s testimony, Ms. Bolts opined that it sounded like the visits were “partially observed” by Ms. Yancy. The visits, nonetheless, had never progressed to “unsupervised” or “unobserved.” Ms. Bolts understood the visits were going well, and she had heard Mother was affectionate with minor and would tell her, “I love you,” during their time together. Following the visits, however, minor sometimes exhibited behavioral issues, throwing tantrums, and being disruptive, including at preschool. Additionally, Ms. Bolts addressed minor’s adoptability and the caregiver’s willingness to adopt. The Agency continued to maintain that Mother’s parental rights should be terminated. Minor, according to Ms. Bolts, was adoptable and her current “caregiver was available and willing to adopt the child.”

The court continued the matter to January 14, 2020. At the continued hearing, the court admitted into evidence the January 14, 2020 status review report, and Ms. Bolt finished her testimony. Mother’s counsel called Mother as a rebuttal witness. Though she initially refused to take the witness stand, she eventually agreed to testify. Once Mother was on the witness stand, she stated, “The reason I’m up here doesn’t mean I’m telling the truth or telling a lie.” Mother then testified she had continued to visit minor twice a week. Minor called her “Mother” and minor gave her hugs and kisses at the visits. When asked if they talked with each other, and how that went, Mother

responded, “I don’t talk to a dog.” Mother stated she calls minor “Little mamas” or “fat fat.” When asked if “fat fat” meant “chubby,” Mother responded, “I guess that’s what fat means, right?” They engaged in activities such as “Color, bubbles.” When minor falls asleep, Mother explained she tries holding her or else sets up a place for minor on the ground with a pillow and blanket. Mother stated, “She seems comfortable as long as she has my phone and my tablet.” At the beginning of the visits, Mother “want[s] to take [minor] home.” At the end of the visits, mother testified, she and the child cry.

Despite Mother’s regular visitation, the Agency argued minor was adoptable and the beneficial parent-child relationship exception to adoption did not apply to Mother. Like the Agency, minor’s counsel argued in favor of adoption and believed termination of parental rights was in minor’s best interests. In contrast, Mother argued the parental beneficial relationship exception to adoption applied, and thus, her parental rights should not be terminated.

The court found Mother did not meet her burden of proof showing a beneficial relationship exception applied in this case, and minor was adoptable. Though the court found Mother’s visits had been regular, the court focused on the “quality of those visits.” Citing to incidents of Mother’s disturbing behavior during some of the visits, the court found the relationship between Mother and minor was not in minor’s best interest. The court terminated Mother’s parental rights and selected a permanent plan of adoption for minor.

## II. DISCUSSION

Mother's sole contention is that the juvenile court erred by not applying the parental beneficial relationship exception to termination of her parental rights. We disagree.

If the juvenile court determines by clear and convincing evidence that it is likely a child will be adopted, as the court did regarding minor, it must terminate a parent's rights and order the child placed for adoption, unless it determines a statutory exception applies. (§ 366.26, subd. (c)(1).) One such exception is when the court "finds a compelling reason for determining that termination would be detrimental to the child" because a parent has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (*Id.*, (c)(1)(B)(i).) A parent seeking to avoid the termination of parental rights bears the burden of proving this exception applies. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.)

The child's benefit from continuing the parent-child relationship means "the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The juvenile court 'balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer.' (*Ibid.*) 'If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.' (*Ibid.*) [¶] 'The exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child's life spent in the parent's

custody, the “positive” or “negative” effect of interaction between parent and child, and the child’s particular needs are some of the variables which logically affect a parent/child bond.’ ([*Autumn H.*] at pp. 575–576.)” (*In re C.B.* (2010) 190 Cal.App.4th 102, 124.)

“Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult’s attention to the child’s needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Many appellate courts have reviewed juvenile courts’ rulings on the parental beneficial relationship exception for substantial evidence. (See, e.g., *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) Recently, however, courts have divided over which of three similar standards to apply. As this Division recently noted, “[I]n our own First District, we have variously found a juvenile court’s decision in this regard reviewable for abuse of discretion (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351), for substantial evidence ([*In re*] G.B. [(2014)] 227 Cal.App.4th [1147,] 1166), and, mostly recently, by a combination of the two. (*In re E.T.* (2018) 31 Cal.App.5th 68, 76 . . . [applying substantial evidence standard to ‘the factual issue of the existence of a beneficial parental relationship’; applying abuse of discretion standard to whether that relationship provides ‘a compelling reason for finding that termination would be detrimental to the child’].)” (*In re Caden C.* (2019) 34 Cal.App.5th 87, 106, review granted July 24, 2019, S255839.) This

Division decided to apply the standard that was a hybrid of the substantial evidence and abuse of discretion standards. (*Ibid.*)

We shall apply this hybrid approach. We agree that our task involves the review of “ ‘a “quintessentially” discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption.’ [Citations.] Intrinsic to a balancing of these interests is the exercise of the court’s discretion, properly reviewable for abuse.” (*In re Caden C.*, *supra*, 34 Cal.App.5th at p. 106, review granted.) We note, however, that our decision would be the same under any of the standards of review that courts have applied.

We conclude that Mother has not established that her parental relationship with minor is so significant and positive that they outweighed the benefits the child would receive from adoption under the circumstances of this case.

As to the first prong of the parental beneficial relationship exception, we recognize that Mother had regular visitations with minor. The regularity of Mother’s visits with minor, however, is not dispositive.

We thus focus on the second prong—whether the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In this regard, there is substantial evidence that as of the section 366.26 hearing, Mother had not demonstrated she occupied a parental role for minor. (See *In re K.P.* (2012) 203 Cal.App.4th 614, 621 [a parent must show he or she “ ‘occup[ies] “a parental role” in the child’s life’ ”].) Mother’s twice weekly, two-hour visits never advanced beyond “observed” visits. And when Mother

was allowed to have an overnight visit with minor around Easter 2018, minor returned to the caregiver's home from the visit unbathed, sick, and dehydrated. Moreover, during the overnight visit, Mother drove alone with minor without a license.

Additionally, Mother's behavior in the presence of minor was at times very disturbing. Various supervisors reported that Mother discussed inappropriate topics during her visits with minor, including suicide, the murder of a rapper, the murder of a family member, and school shootings.

Mother also had difficulty controlling her anger during visits. In March 2018, for example, when Mother came to pick up minor, she was yelling and cursing on her phone, and then "snatched" the seven-month-old minor from the maternal cousin S.E.'s arms, angrily stating to the person on the phone, "this lady thinks she is taking care of my baby." Two months later, Mother again "snatched" the baby, this time from the maternal grandmother's arms. Thereafter, in the presence of minor, Mother assaulted the caregiver, G.W., hitting her multiple times with a cell phone and biting her leg. On September 18, 2018, the Gathering Place terminated its services with Mother because on that date Mother yelled at and spoke aggressively to staff.

By the section 366.26 hearing in November 2019, although visits had improved and were no longer as dramatic or potentially traumatic for minor, there was a dearth of evidence demonstrating that interactions between Mother and minor had amounted to a beneficial parental relationship. Child Welfare Worker Kotch reported that during a July 2019 supervised visit, she observed that minor "had a subdued reaction to seeing her mother" and only hugged Mother when prompted to do so by Mother. According to Ms. Kotch, the child had minimum engagement with Mother, primarily eating snacks

and watching videos on Mother's cell phone. Notably, Ms. Kotch did not see minor initiate affection or communication with Mother. Indeed, when Mother failed to arrive for a scheduled visit in August 2019, the child welfare worker observed that minor did not seem upset about Mother's failure to visit, remained "smiley and friendly," and when the caregiver arrived to pick her up, minor yelled, "[M]om!" and ran to her open arms. These visits within months of the section 366.26 hearing hardly established the existence of a parent-child relationship between Mother and minor.

Further corroborating the lack of a parental relationship with minor was Mother's testimony that on several occasions minor called her by her first name, only later adding minor called her "Mother." Moreover, in responding to a question regarding if Mother and minor talked with each other, Mother testified, "I don't talk to a dog."

On the other hand, there was substantial evidence that minor's removal from Mother's care and placement with G.W. was a very positive development. Minor had bonded to G.W., sought attention, and affection from her, and relied on G.W. to meet her everyday emotional and physical needs. In describing minor's bond with G.W., the child welfare worker noted it was "healthy, safe and appropriate," minor was developmentally on target, and was "flourishing" in her placement. This relationship was in sharp contrast to minor's interactions with Mother who occupied the role as a visitor rather than as a parent.

Mother's reliance on G.W.'s statement that she believed continued contact with Mother would be in the child's best interests is misplaced. Though G.W., in September 2019, felt it was important for minor to have a relationship with Mother and was supportive of visits "as long as it was safe [and] healthy," without negatively affecting minor, by October 2019, the

social worker reported G.W. was uncertain if visitation was in minor's best interests because following visits, minor continued to display "concerning behaviors." Given G.W.'s ambivalence about continuing visitation, and in view of the substantial evidence supporting adoption, G.W.'s opinion is not dispositive in demonstrating a parental relationship existed that would outweigh the benefits of an adoptive home for minor.

While we acknowledge Mother's generally consistent visits with minor, we, like the juvenile court, must take into account the "quality of those visits," and unfortunately, the record reflects Mother's ongoing issues with anger management, the lack of parenting skills, and her inability to bond with minor. At this point, minor deserves the stability and permanence that adoption can provide. Accordingly, the court's rejection of the beneficial parental relationship exception as a basis for maintaining parental rights is supported by substantial evidence and a reasonable exercise of discretion.

### **III. DISPOSITION**

The order terminating parental rights is affirmed.



MARGULIES, J.

WE CONCUR:

HUMES, P. J.

BANKE, J.

A159810  
*In re P.A.*